12.2 The Employer may extend the deadline for submission of tenders by issuing an amendment in accordance with Clause 5, in which case all rights and obligations of the Employer and the Tenderers previously subject to the original deadline will then be subject to the new deadline.

**13. Late Tenders**

13.1 Any Tender received by the Employer after the deadline prescribed in Clause 12 will be returned unopened to the Tenderer.

**14. Modification and Withdrawal of Tenders**

14.1 Tenderers may modify contents of First or Second Covers separately for each Cover or withdraw their Tenders by giving notice in writing before the deadline prescribed in Clause 12.

14.2 Each Tenderer's modification separately for each Cover or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 10 & 11, with the outer and inner envelopes additionally marked "**MODIFICATION FOR FIRST/SECOND COVER**" or "**WITHDRAWAL**", as appropriate.

14.3 No Tender may be modified after the deadline for submission of Tenders.

14.4 Withdrawal or modification of a Tender between the deadline for submission of Tenders and the expiration of the original period of Tender validity specified in Clause 8.1 above or as extended pursuant to Clause 8.2 may result in the forfeiture of the earnest money deposit pursuant to Clause 9.

1 4.5 Tenderers may only offer discounts to, or otherwise modify the prices of their Tenders by submitting Tender modifications in accordance with this clause, or included in the original Tender submission.

## E. Tender opening and evaluation

**15. Opening of First Cover of all Tenderers and evaluation to determine qualified Tenderers:**

15.1 19.1 The Employer will open the Technical bid (through e-Proc) of all the Tenders received (except those received late or withdrawn), including modifications for First Cover made pursuant to Clause 18, in the presence of the Tenderers or their representatives who choose to attend at 16.30 hours on 18/06/2020 and the place specified earlier. In the event of the specified date of Tender opening being declared a holiday for the Employer, the Tenders will be opened at the appointed time and location on the next working day Envelopes marked "**WITHDRAWAL**" shall be opened and read out first. The First Cover of Tenders for which an acceptable notice of withdrawal has been submitted pursuant to Clause 14 shall not be opened.

15.2 Deleted

15.4 The Employer shall prepare minutes of the Tender opening, including the information disclosed to those present in accordance with Sub-Clause 15.3.

15.5 Deleted[2]

15.6 The Employer will evaluate and determine whether each tenderer (a) meets the eligibility criteria defined in ITT Clause 2; (b) is accompanied by the required earnest money deposit as per stipulations in ITT Clause and (c) meets the minimum qualification criteria stipulated in ITT Clause 3. The Employer will draw out a list of qualified Tenderers.

**16. Opening of Second Cover of qualified Tenderers and evaluation:**

16.1 The Employer will inform all the Qualified Tenderers the time, date and venue fixed for the opening of the Second Cover containing the priced Tenders. The Employer will open the large cover containing the Second Covers of Qualified Tenderers at the appointed time and date in the presence of the Tenders or their representatives who choose to attend. In the event of the specified date of Second Cover opening being declared a holiday for the Employer, the Second Covers will be opened at the appointed time and location on the next working day.

16.2 Deleted.

16.3 The Tenderers' names, the Tender prices, the total amount of each Tender, any discounts, Tender modifications and withdrawals, and such other details as the Employer may consider appropriate,

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[2] Refer GOK circular No. PWD 1359 SO/FC 2001 (P-2) dated 30th June 2003.

will be announced by the Employer at the opening. No Tender shall be rejected at the opening.

16.4 The Employer shall prepare minutes of the Second Cover Tender opening, including the information disclosed to those present in accordance with Sub-Clause 16.3.

## 17. Process to be confidential

17.1 Information relating to the examination, clarification, evaluation, and comparison of Tenders and recommendations for the award of a contract shall not be disclosed to Tenderers or any other persons not officially concerned with such process until the award to the successful Tenderer has been announced. Any effort by a Tenderer to influence the Employer's processing of Tenders or award decisions may result in the rejection of his Tender.

## 18. Clarification of Tenders

18.1 To assist in the examination, evaluation, and comparison of Tenders, the Employer may, at his discretion, ask any Tenderer for clarification of his Tender, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by cable, but no change in the price or substance of the Tender shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Tenders in accordance with Clause 20.

18.2 Subject to sub-clause 18.1, no Tenderer shall contact the Employer on any matter relating to its Tender from the time of the Tender opening to the time the contract is awarded. If the Tenderer wishes to bring additional information to the notice of the Employer, it should do so in writing.

18.3 Any effort by the Tenderer to influence the Employer in the Employer's Tender evaluation, Tender comparison or contract award decisions may result in the rejection of the Tenderers' Tender.

## 19. Examination of Tenders and determination of responsiveness

19.1 Prior to the detailed evaluation of Tenders, the Employer will determine whether each Tender; (a) has been properly signed; and; (b) is substantially responsive to the requirements of the Tender documents.

19.2 A substantially responsive Tender is one which conforms to all the terms, conditions, and specifications of the Tender documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the Works; (b) which limits in any substantial way, inconsistent with the Tender documents, the Employer's rights or the Tenderer's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other Tenderers presenting substantially responsive Tenders.

19.3 If a Tender is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

## 20. Correction of errors

20.1 Tenders determined to be substantially responsive will be checked by the Employer for any arithmetic errors. Errors will be corrected by the Employer as follows:

(a) where there is a discrepancy between the rates in figures and in words, the lower of the two will govern; and

(b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will govern.

20.2 The amount stated in the Tender will be adjusted by the Employer in accordance with the above procedure for the correction of errors and, with the concurrence of the Tenderer, shall be considered as binding upon the Tenderer. If the Tenderer does not accept the corrected amount the Tender will be rejected, and the earnest money deposit may be forfeited in accordance with Sub-Clause 9.6 (b).

## 21. Evaluation and comparison of Tenders

21.1 The Employer will evaluate and compare only the Tenders determined to be substantially responsive in accordance with Clause 19.

21.2 In evaluating the Tenders, the Employer will determine for each Tender the evaluated Tender Price by adjusting the Tender Price as follows:

(a) making any correction for errors pursuant to Clause 20; and

(b) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with Sub Clause 14.5.

21.3 The Employer reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors which are in excess of the requirements of the Tender documents or otherwise result in unsolicited benefits for the Employer shall not be taken into account in Tender evaluation.

## F. Award of Contract

### 22. Award criteria

22.1 Subject to Clause 24, the Employer will award the Contract to the Tenderer whose Tender has been determined to be substantially responsive to the Tender documents and who has offered the lowest evaluated Tender Price, provided that such Tenderer has been determined to be (a) eligible in accordance with the provisions of Clause 2, and (b) qualified in accordance with the provisions of Clause 3.

### 23. Employer's right to accept any Tender and to reject any or all Tenders

23.1 Notwithstanding Clause 22, the Employer reserves the right to accept or reject any Tender, and to cancel the Tender process and reject all Tenders, at any time prior to the award of Contract, without thereby incurring any liability to the affected Tenderer or Tenderers or any obligation to inform the affected Tenderer or Tenderers of the grounds for the Employer's action.

### 24. Notification of award and signing of Agreement

24.1 The Tenderer whose Tender has been accepted will be notified of the award by the Employer prior to expiration of the Tender validity period by cable, telex or facsimile confirmed by registered letter. This letter (hereinafter and in the *Conditions of Contract* called the "Letter of Acceptance") will state the sum that the Employer will pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price").

24.2 The notification of award will constitute the formation of the Contract, subject only to the furnishing of Security deposit in accordance with the provisions of Clause 25.

24.3 The Agreement will incorporate all agreements between the Employer and the successful Tenderer. It will be kept ready for signature of the successful Tenderer in the office of Employer within 30 days following the notification of award along with the Letter of Acceptance. Within 20 days of receipt, the successful Tenderer will sign the Agreement and deliver it to the Employer.

24.4 Upon the furnishing by the successful Tenderer of the Performance Security, the Employer will promptly notify the other Tenderers that their Tenders have been unsuccessful.

### 25. Security deposit

25.1 Within 20 days of receipt of the Letter of Acceptance, the successful Tenderer shall deliver to the Employer a Security deposit in any of the forms given below for an amount equivalent to 5% of the Contract price :

- - Banker's cheque/Demand draft,/Pay Order in favour of Commissioner BBMP payable at Bangalore or
- A Bank Guarantee in the form given in Section 10; or
- Special Small savings instruments pledged to Commissioner, BBMP / Executive Engineer – Project Division, Yelahanka Zone BBMP

25.2 If the security deposit is provided by the successful Tenderer in the form of a Bank Guarantee, it shall be issued either by a Nationalized/Scheduled bank.

25.3 The security deposit if furnished in cash or demand draft can, if requested, be converted to interest bearing securities at the cost of the contractor.

25.4 Failure of the successful Tenderer to comply with the requirements of Sub-Clause 25.1 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Earnest money deposit.

**26. Corrupt or Fraudulent practices**

26.1 The BBMP requires that the Tenderers/Suppliers/Contractors, observe the highest standard ethics during the procurement and execution of such contracts. In pursuance of this policy, BB :

(a) will reject a proposal for award if it determines that the Tenderer recommended for awa has engaged in corrupt or fraudulent practices in competing for the contract in question;

(b) will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a GOK contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a GOK contract.

26.2 Furthermore, Tenderers shall be aware of the provision stated in sub-clause 43.2 of the Conditions of Contract.

## SECTION 3: QUALIFICATION INFORMATION

The information to be filled in by the Tenderer hereunder will be used for purposes of computing Tender capacity as provided for in Clause 3 of the Instructions to Tenderers. This information will not be incorporated in the Contract.

1.1 Constitution or legal status of Tenderer [Attach copy]

Place of Registration

Principal place of business: (Attach Copy)

1.2 Total value of civil engineering construction works executed and payments received in the last five years (in Rs. Lakhs) Attach Certificate from Chartered Accountant

2014-15 .....
2015-16.....
2016-17 .....
2017-18.....
2018-19.....

1.3 Work performed as Prime Contractor (in the same name) on works of similar nature over during the five years specified in 1.2 above.

| Project Name | Name of Employer | Description of Work | Contract Number | Value of contract Rs. Lakhs | Date of issue of work order | Specified period of completion | Actual date of completion | Remarks explaining reasons for delay in completion of work |
|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| | | | | | | | | |

1.4 Quantities of work executed as prime contractor (in the same name) during the last five years specified in 1.2 above:

| Year | Name of Work | Name of Employer | Quantity of work performed (cum)[3] | | | Remarks (Indicate contract reference) |
|---|---|---|---|---|---|---|
| | | | Cement Concrete | Masonry | Earthworks | |
| 2014-15 | | | | | | |
| 2015-16 | | | | | | |
| 2016-17 | | | | | | |

[3] Items of work for which data is requested should tally with that specified in ITT Clause 3

| | | | | | | |
|---|---|---|---|---|---|---|
| 2017-18 | | | | | | |
| 2018-19 | | | | | | |

1.5 Information on works for which Tenders have been submitted and works which are yet to be completed as on the date of this Tender.

(A) Existing commitments and on-going works:

| Description Work | Place & State | Contract No. & Date | Name and Address of Employer | Value of Contract (Rs. lakhs) | Stipulated period of completion | Value of works remaining to be completed (Rs. lakhs) (The contractor shall enclose/attach all the necessary certificates duly attested by the employer) | Anticipated date of completion |
|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| | | | | | | | |

(B) Works for which Tenders already submitted:

| Description Work | Place & State | Name and Address of Employer | Estimated value of works (Rs. lakhs) | Stipulated period of completion | Date when decision is expected | Remarks if any |
|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| | | | | | | |

1.6. The following items of equipment are considered essential for successfully carrying out the works. The Tenderer should furnish all the information listed below.

| Item of Equipment | Requirement No. & Capacity {The item of equipment, required number and capacity should match with those specified in ITT Clause 3.3 (a)} | Owned | Owned and available Number/ Capacity | Remarks |
|---|---|---|---|---|
| | | | | |
| | | | | |

1.7 Reports on the financial standing of the tenderer, such as profit and loss statements and auditor's reports for the last five years;

1.8 Qualification and experience of the key technical and management personnel in permanent employment with the tenderer and those that are proposed to be deployed on this contract, if awarded.

1.9. Name, address, and telephone, telex, and fax numbers of the Tenderers' bankers who may provide references if contacted by the Employer.

1.10 Evidence of access to financial resources to meet the qualification requirement specified in ITT Clause3.3 (b): Cash in hand, Letter of Credit etc. List them below and attach certificate from the Banker in the suggested format as under:

## BANKER'S CERTIFICATE

This is to certify that M/s. ..... is a reputed company with a good financial standing. If the contract for this work, namely ..... (*name of the work*) awarded to the above firm, we shall be able to provide overdraft/credit facilities to the extent of Rs. ..... to meet the working capital requirements for executing the above contract

Sd/-
Name of the Bank, Senior Bank Manger
Address:.....

1.11 Proposals for subcontracting components of works amounting to more than 20% of the contract price .

| Item of Work | Value of Sub-Contract | Identified Sub-Contractor (Name and address) | Experience of similar work (Attach certificates from the respective Employers.) |
|---|---|---|---|
| | | | |

1.12 Information on litigations in which the Tenderer is involved:

| Other Party (ies) | Employer | Details of dispute | Amount involved | Remarks showing present status |
|---|---|---|---|---|
| | | | | |

## SECTION 4: FORMS OF TENDER, LETTER OF ACEPTANCE, NOTICE TO PROCEED WITH THE WORK AND AGREEMENT FORM

### Form of Tender

Description of the Works: **BBMP Assets Fencing of Vacant BBMP Land (Including Parks Play grounds and Gardens) Ward No.07.**

.....

*(To be filled in by the Employer before issue of the Tender document)*

**Tender**

To : .....

Address : .....
.....

*(To be filled in by the Employer before issue of the Tender document)*

GENTLEMEN,

We offer to execute the Works described above in accordance with the Conditions of Contract accompanying this Tender for the Contract Price of _____ *[in figures]* (_____) *[in letters].*[4]

[4] To be filled in by the Tenderer, together with his particulars and date of submission at the bottom of the Form of Tender

This Tender and your written acceptance of it shall constitute a binding contract between us. We understand that you are not bound to accept the lowest or any Tender you receive.

We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will strictly observe the laws against fraud and corruption in force in India namely "Prevention of Corruption Act 1988".

We hereby confirm that this Tender complies with the Tender validity and Earnest money deposit required by the Tender documents.

We attach herewith our current income-tax clearance certificate.

Yours faithfully,

Authorized Signature:

Name & Title of Signatory: .....

Name of Tenderer .....
Address: .....
.....
.....

## Letter of Acceptance

(letterhead paper of the Employer)

_____[date]

To: _____ *[name and address of the Contractor]*

Dear Sirs,

This is to notify you that your Tender dated: ..... for execution of the .....
*[name of the contract and identification number, as given in the Instructions to Tenderers]* for the Contract Price of Rupees ..... (.....) [amount in words and figures], as corrected and modified in accordance with the Instructions to Tenderers is hereby accepted by our Agency.

You are hereby requested to furnish Security deposit, in the form detailed in Para 25.1 of ITT for an amount of Rs.....within 20 days of the receipt of this letter of acceptance valid up to 30 days from the date of expiry of Defects Liability Period i.e. up to ..... and sign the contract, failing which action as stated in Para 25.4 of ITT will be taken.

Yours faithfully,

Authorized Signature

Name and Title of Signatory

Name of Agency

## Issue of Notice to proceed with the work

(letterhead of the Employer)

_____ (date)

To

_____ *(name and address of the Contractor)*

_____

_____

Dear Sirs:

Pursuant to your furnishing the requisite security deposit as stipulated in ITT Clause 25.1 and signing of the contract agreement for the construction of .....
..... *(Name of the Contract)* a Tender Price of Rs....., you are hereby instructed to proceed with the execution of the said works in accordance with the contract documents.

Yours faithfully,
(Signature, name and title of signatory
authorized to sign on behalf of Employer)

## Agreement Form

**Agreement**

This agreement, made the .....day of .....20....., between.....[name and address of Employer] (hereinafter called "the Employer") of the one part and .....
[name and address of contractor] (hereinafter called "the Contractor") of the other part.

Whereas the Employer is desirous that the Contractor execute .....
.....
[ name and identification number of Contract] (hereinafter called "the Works") and the Employer has accepted the Tender by the Contractor for the execution and completion of such Works and the remedying of any defects therein at a contract price of Rupees.....

NOW THIS AGREEMENT WITNESSETH as follows:

1. In this Agreement, words and expression shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to, and they shall be deemed to form and be read and construed as part of this Agreement.
2. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all aspects with the provisions of the Contract.
3. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying the defects wherein the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.
4. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz:
   - i) Letter of Acceptance;
   - ii) Notice to proceed with the works;
   - iii) Contractor's Tender;
   - iv) Contract Data;
   - v) Conditions of contract (including Special Conditions of Contract);
   - vi) Specifications;

vii) Drawings;
viii) Bill of Quantities; and
ix) Any other document listed in the Contract Data as forming part of the contract.

In witness whereof the parties thereto have caused this Agreement to be executed the day and year first before written.

The Common Seal of .....
was hereunto affixed in the presence of:
Signed, Sealed and Delivered by the said .....
.....

in the presence of:

Binding Signature of Employer .....

Binding Signature of Contractor .....

# SECTION 5: CONDITIONS OF CONTRACT

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# Conditions of Contract

## A. General

### 1. Definitions

1.1 Terms which are defined in the Contract Data are not also defined in the Conditions of Contract but keep their defined meanings. Bold letters are used to identify defined terms.

**Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Tender.
**Compensation events** are those defined in Clause 34 hereunder.
The **Completion Date** is the date of completion of the Works as certified by the Employer in accordance with Sub Clause 38.1.
The **Contract** is the contract between the Employer and the Contractor to execute, complete and maintain the Works. It consists of the documents listed in Clause 2.3 below.
The **Contract Data** defines the documents and other information which comprise the Contract.
The **Contractor** is a person or corporate body whose Tender to carry out the Works has been accepted by the Employer.
The **Contractor's Tender** is the completed Tender document submitted by the Contractor to the Employer.
The **Contract price** is the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.
**Days** are calendar days; **months** are calendar months.
A **Defect** is any part of the Works not completed in accordance with the Contract.
The **Defects liability period** is the period named in the Contract Data and calculated from the Completion Date.
The **Employer** is the party who will employ the Contractor to carry out the Works.
**Equipment** is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.
The **Initial Contract price** is the Contract Price listed in the Employer's Letter of Acceptance.
The **Intended Completion Date** is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is specified in the Contract Data. The Intended Completion Date may be revised only by the Employer by issuing an extension of time.
**Materials** are all supplies, including consumables, used by the contractor for incorporation in the Works.
**Plant** is any integral part of the Works which is to have a mechanical, electrical, electronic or chemical or biological function.
The **Site** is the area defined as such in the Contract Data.
**Specification** means the Specification of the Works included in the Contract and any modification or addition made or approved by the Employer.
The **Start Date** is given in the Contract Data. It is the date when the Contractor shall commence execution of the works. It does not necessarily coincide with any of the Site Possession Dates.
A **Subcontractor** is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract which includes work on the Site.
A **Variation** is an instruction given by the Employer which varies the Works.
The **Works** are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as defined in the Contract Data.

### 2. Interpretation

2.1 In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Employer will provide instructions clarifying queries about the Conditions of Contract.

2.2 The documents forming the Contract shall be interpreted in the following order of priority:

(1) Agreement
(2) Letter of Acceptance, notice to proceed with the works
(3) Contractor's Tender
(4) Contract Data
(5) Conditions of Contract
(6) Specifications

(7) Drawings
(8) Bill of quantities and
(9) any other document listed in the Contract Data as forming part of the Contract.

**3. Law governing contract**

3.1 The law governing the Contract is the Laws of India supplanted by the Karnataka Local Acts.

**4. Employer's decisions**

4.1 Except where otherwise specifically stated, the Employer will decide contractual matters between the Employer and the Contractor .

**5. Delegation**

5.1 The Employer may delegate any of his duties and responsibilities to other people after notifying the Contractor and may cancel any delegation after notifying the Contractor.

**6. Communications**

6.1 Communications between parties which are referred to in the conditions are effective only when in writing. A notice shall be effective only when it is delivered (in terms of Indian Contract Act).

**7. Subcontracting**

7.1 Deleted

**8. Other Contractors**

8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer.

**9. Personnel**

9.1 The Contractor shall employ the technical personnel (of number and qualifications) as may be stipulated by GOK from time to time during the execution of the work. The technical staff so employed shall be available at site as may be stipulated by the Employer.

9.2 If the Employer asks the Contractor to remove a person who is a member of the Contractor's staff or his work force stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.

**10. Employer's and Contractor's risks**

10.1 The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.

**11. Employer's risks**

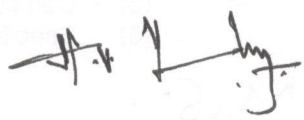
11.1 The Employer is responsible for the excepted risks which are (a) in so far as rebellion, riot commotion or disorder or (b) a cause due solely to the design of the Works, other than the Contractor's design.

**12. Contractor's risks**

12.1 All risks of loss of or damage to physical property and of personal injury and death which arise during and in consequence of the performance of the Contract other than the excepted risks are the responsibility of the Contractor.

**13. Queries about the Contract Data**

13.1 The Employer will clarify queries on the Contract Data.



**14. Contractor to construct the Works**

14.1 The Contractor shall construct the Works in accordance with the Specification and Drawings.

**15. The Works to be completed by the Intended Completion Date**

15.1 The Contractor may commence execution of the Works on the Start Date and complete them by the Intended Completion Date.

**16. Safety**

16.1 The Contractor shall be responsible for the safety of all activities on the Site.

**17. Discoveries**

17.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site is the property of the Employer. The Contractor is to notify the Employer of such discoveries and carry out the Employer's instructions for dealing with them.

**18. Possession of the Site**

18.1 The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the Contract Data the Employer is deemed to have delayed the start of the relevant activities and this will be Compensation Event.

**19. Access to the Site**

19.1 The Contractor shall allow the Employer and any person authorized by the Employer access to the Site, to any place where work in connection with the Contract is being carried out or is intended to be carried out and to any place where materials or plant are being manufactured / fabricated / assembled for the works.

**20. Instructions**

20.1 The Contractor shall carry out all instructions of the Employer which comply with the applicable laws where the Site is located.

## B. Time Control

**21. Program**

21.1 Within the time stated in the Contract Data the Contractor shall submit to the Employer for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works.

21.2 The Employer's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Employer again at any time. A revised Program is to show the effect of Variations and Compensation Events.

**22. Extension of the Intended Completion Date**

22.1 The Employer shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date.

22.2 The Employer shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Employer for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information.

**23. Delays ordered by the Employer**

23.1 The Employer may instruct the Contractor to delay the start or progress of any activity within Works.

**24. Management meetings**

24.1 The Employer may require the Contractor to attend a management meeting. The business of a management meeting shall be to review the progress achieved and the plans for remaining work.

24.2 The responsibility of the parties for actions to be taken is to be decided by the Employer either at the management meeting or after the management meeting and stated in writing to be distributed to all who attended the meeting.

## C. Quality Control

**25. Identifying defects**

25.1 The Employer shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Employer may instruct the Contractor to search for a Defect and to uncover and test any work that the Employer considers may have a Defect

**26. Tests**

26.1 If the Employer instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect the test shall be a Compensation Event.

**27. Correction of defects**

27.1 The Employer shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion and is defined in the Contract Data. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

27.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Employer's notice.

**28. Uncorrected defects**

28.1 If the Contractor has not corrected a Defect within the time specified in the Employer's notice, the Employer will assess the cost of having the Defect corrected, and the Contractor will pay this amount.

## D. Cost Control

**29. Bill of Quantities (BOQ)**

29.1 The BOQ shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.

29.2 The BOQ is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate in the BOQ for each item

**30. Variations**

30.1 The Employer shall have power to order the Contractor to do any or all of the following as considered necessary or advisable during the progress of the work by him

(a) Increase or decrease of any item of work included in the Bill of Quantities (BOQ);
(b) Omit any item of work;
(c) Change the character or quality or kind of any item of work;
(d) Change the levels, lines, positions and dimensions of any part of the work;
(e) Execute additional items of work of any kind necessary for the completion of the works; and
(f) Change in any specified sequence, methods or timing of construction of any part of the work.

30.2 The Contractor shall be bound to carry out the work in accordance with any instructions in this connection, which may be given to him in writing by the Employer and such alteration shall not vitiate or invalidate the contract.

30.3 Variations shall not be made by the Contractor without an order in writing by the Employer, provided that no order in writing shall be required for increase or decrease in the quantity of an item appearing in the BOQ so long as the work executed conforms to the approved drawings.

30.4 The Contractor shall promptly request in writing to the Employer to confirm verbal orders and the officer issuing oral instructions shall confirm it in writing within 30 days, failing which the work shall be carried out as though there is no variation. In case variation is approved it shall be accompanied by BOQ, failing which the contractor shall be responsible for deviation if any. Further, approval of Govt. / BBMP has to be obtained for the variation exceeding 5%.

**31. Payments for Variations**

31.1 Payment for increase in the quantities of an item in the BOQ up to 25% of that provided in the Bill of Quantities shall be made at the rates quoted by the Contractor.

31.2 For quantities in excess of 125% of the tendered quantity of an item as given in the BOQ, the Contractor shall be paid at the rate entered in or derived from in the Schedule of Rates (applicable for the area of the work and current at the time of award of contract) plus or minus the overall percentage of the original tendered rates over the current Schedule of Rates prevalent at the time of award of contract.

31.3 If there is no rate for the additional, substituted or altered item of the work in the BOQ, efforts would be made to derive the rates from those given in the BOQ or the Schedule of Rates (applicable for the area of the work and current at the time of award of contract) and if found feasible the payment would be made at the derived rate for the item plus or minus the overall percentage of the original tendered rates over the current Schedule of Rates prevalent at the time of award of contract

31.4 If the rates for additional, substituted or altered item of work cannot be determined either as at 31.1 or 31.2 or 31.3 above, the Contractor shall be requested to submit his quotation for the items supported by analysis of the rate or rates claimed, within 7 days.

31.5 If the Contractor's quotation is determined unreasonable, the Employer may order the Variation and make a change to the Contract Price which shall be based on Employer's own forecast of the effects of the Variation on the Contractor's costs.

31.6 If the Employer decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.

31.7 Under no circumstances the Contractor shall suspend the work on the plea of non-settlement of rates for items falling under this Clause.

**32. Submission of bills for payment**

32.1 The Contractor shall submit to the Employer monthly bills of the value of the work completed less the cumulative amount paid previously.

32.2 The Employer shall check the Contractor's bill and determine the value of the work executed which shall comprise of (i) value of the quantities of the items in the BOQ completed and (ii) valuation of Variations and Compensation Events.

32.3 The Employer may exclude any item paid in a previous bill or reduce the proportion of any item previously paid in the light of later information.

**33. Payments**

33.1 Payments shall be adjusted for deductions for advance payments other than recoveries in terms of contract and taxes, at source, as applicable under the law. The Employer shall pay the Contractor the within 60 days of submission of bill. The contractor shall be liable to pay liquidated damages for shortfall in progress. For progress beyond the agreed programme payment is subject to availability of the grants.

33.2 Items of the Works for which no rate or price has been entered in will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

**34. Compensation events**

34.1 The following are Compensation events unless they are caused by the Contractor:

(a) The Employer does not give access to a part of the Site by the Site Possession Date stated in the Contract Data.

(b) The Employer orders a delay or does not issue drawings, specifications or instructions required for execution of works on time.

(c) The Employer instructs the Contractor to uncover or to carry out additional tests upon work which is then found to have no Defects.

(d) The Employer gives an instruction for dealing with an unforeseen condition, caused the Employer, or additional work required for safety or other reasons.
(e) The effect on the Contractor of any of the Employer's Risks.
(f) The Employer unreasonably delays issuing a Certificate of Completion.
(g) Other Compensation Events listed in the Contract Data or mentioned in the Contract.

34.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date is extended. The Employer shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.

34.3 As soon as information demonstrating the effect of each Compensation event upon the Contractor's forecast cost has been provided by the Contractor, it is to be assessed by the Employer and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Employer shall adjust the Contract Price based on Employer's own forecast. The Employer will assume that the Contractor will react competently and promptly to the event.

34.4 The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor not having given early warning or not having cooperated with the Employer.

**35. Tax**

35.1 The rates quoted by the Contractor shall be deemed to be inclusive of the sales and other taxes that the Contractor will have to pay for the performance of this Contract. The Employer will perform such duties in regard to the deduction of such taxes at source as per applicable law.

**36. Liquidated damages**

36.1 The Contractor shall pay liquidated damages to the Employer at the rate per day stated in the Contract Data for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the Contract Data. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages does not affect the Contractor's liabilities.

36.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Employer shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment of bill.

**37. Cost of repairs**

37.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

## E. Finishing the Contract

**38. Completion**

38.1 The Contractor shall request the Employer to issue a Certificate of Completion of the Works and the Employer will do so upon deciding that the Work is completed.

**39. Taking over**

39.1 The Employer shall take over the Site and the Works within seven days of issuing a certificate of Completion.

**40. Final account**

40.1 The Contractor shall supply to the Employer a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Employer shall issue a Defect Liability Certificate and certify any final payment that is due to the Contractor within 90 days of receiving the Contractor's account if it is correct and complete. If it

is not, the Employer shall issue within 90 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Employer shall decide on the amount payable to the Contractor and make payment within 60 days of receiving the Contractor's revised account.

**41. As built drawings**

41.1 If "as built" Drawings (Completion drawings) are required, the Contractor shall supply them by the dates stated in the Contract Data.

41.2 If the Contractor does not supply the Drawings by the dates stated in the Contract Data, or they do not receive the Employer's approval, the Employer shall withhold the amount stated in the Contract Data from payments due to the Contractor.

**42. Termination**

42.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

42.2 Fundamental breaches of Contract include, but shall not be limited to the following:

(a) the Contractor stops work for 45 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Employer;

(b) Deleted

(c) The Contractor becomes bankrupt or goes into liquidation other than for a reconstruction or amalgamation;

(d) Deleted

(e) the Employer gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Employer;

(f) the Contractor does not maintain a security which is required;

(g) the Contractor has delayed the completion of works by the number of days for which the maximum amount of liquidated damages can be paid as defined in the Contract data; and

(h) if the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in the executing the Contract.
For the purpose of this paragraph : "corrupt practice" means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution. "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower, and includes collusive practice among Tenderers (prior to or after Tender submission) designed to establish Tender prices at artificial non-competitive levels and to deprive the Borrower of the benefits of free and open competition."

42.3 When either party to the Contract gives notice of a breach of contract to the Employer for a cause other than those listed under Sub Clause 42.2 above, the Employer shall decide whether the breach is fundamental or not.

42.4 Notwithstanding the above, the Employer may terminate the Contract for convenience.

42.5 If the Contract is terminated the Contractor shall stop work immediately, make the Site safe and secure and leave the Site as soon as reasonably possible.

**43. Payment upon Termination**

43.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Employer shall prepare bill for the value of the work done less advance payments received up to the date of the bill, less other recoveries due in terms of the contract, less taxes due to be deducted at source as per applicable law and less the percentage to apply to the work not completed as indicated in the Contract Data. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor the difference shall be a debt payable to the Employer.

43.2 If the Contract is terminated at the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Employer shall prepare bill for the value of the work done, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works and less advance payments received up to the date of the certificate, less other recoveries due in terms of

the contract, and less taxes due to be deducted at source as per applicable law and payment accordingly.

**44. Property**

44.1 All materials on the Site, Plant, Equipment, Temporary Works and Works are deemed to be the property of the Employer, if the Contract is terminated because of a Contractor's default.

**45. Release from performance**

45.1 If the Contract is frustrated by any event entirely outside the control of either the Employer or the Contractor the Employer shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which commitment was made

## F. Special Conditions of Contract

**1. Labour :**

The Contractor shall, unless otherwise provided in the Contract, make his own arrangements for the engagement of all staff and labour, local or other, and for their payment, housing, feeding and transport.

The Contractor shall, if required by the Employer, deliver to the Employer a return in detail, in such form and at such intervals as the Employer may prescribe, showing the staff and the numbers of the several classes of labour from time to time employed by the Contractor on the Site and such other information as the Employer may require.

**2. Compliance with labour regulations** :

During continuance of the contract, the Contractor and his sub contractors shall abide at all times by all existing labour enactments and rules made there under, regulations, notifications and bye laws of the State or Central Government or local authority and any other labour law (including rules), regulations, bye laws that may be passed or notification that may be issued under any labour law in future either by the State or the Central Government or the local authority. The Contractor shall keep the Employer indemnified in case any action is taken against the Employer by the competent authority on account of contravention of any of the provisions of any Act or rules made there under, regulations or notifications including amendments. If the Employer is caused to pay or reimburse, such amounts as may be necessary to cause or observe, or for non-observance of the provisions stipulated in the notifications/bye laws/Acts/Rules/regulations including amendments, if any, on the part of the Contractor, Employer shall have the right to deduct any money due to the Contractor including his amount of security deposit. The Employer shall also have right to recover from the Contractor any sum required or estimated to be required for making good the loss or damage suffered by the Employer.

The employees of the Contractor and the Sub-Contractor in no case shall be treated as the employees of the Employer at any point of time.

**3. Protection of Environment:**

The contractor shall take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise or other causes arising as a consequence of his methods of operation. During continuance of the contract, the contractor and his sub-contractors shall abide at all times by all existing enactments on environmental protection and rules made there under, regulations, notifications and bye-laws of the State or Central Government, or local authorities and any other law, bye-law, regulations that may be passed or notification that may be issued in this respect in future by the State or Central Government or the local authority.

4. In the case of the death of a Contractor after executing the agreement / commencement of the work, his legal heir, if an eligible registered Contractor and willing can execute and complete the work at the accepted tender rates irrespective of the cost of the work.

5. The successful bidder should furnish the difference of amount (ie., difference of Estimated cost and Quoted amount ) if quoted below the CSR in the form of D.D in favour of the Commissioner / Exe.Engineer before entering to Agreement

6. Add Price Escalation clause as per G.O.No.FD 3 PCL 2008, Bangalore Dated:21.11.2008

*[ Add other Clauses specific to the work for which tenders are invited.]*

## SECTION 6:
## CONTRACT DATA

**Items marked "N/A" do not apply in this Contract.**

| The following documents are also part of the Contract: | **Clause Reference** |
|---|---|
| • The Schedule of Operating and Maintenance Manuals | [48] |
| • The Methodology and Program of Construction | [25] |
| • Site Investigation Reports | [14] |
| • The Schedule of Key and Critical Equipment to be deployed on the work as per agreed program of construction. | [25] |

The Employer is:
Name: The Commissioner
Address: BBMP, N.R. Square Bangalore-02

Name of authorized Representative Executive Engineer
Project Division – Yelahanka Zone
Bruhat Bangalore Mahanagara Palike

The name and identification number of the Contract is

Works for **BBMP Assets Fencing of Vacant BBMP Land (Including Parks Play grounds and Gardens) Ward No.07.**

The start date shall be the date of issue of notice to proceed with the work. [1.1]

The Intended Completion Date for the whole of the Works is 09 Months with the following milestones

Milestone dates:
The Site Possession Date is: Date of work order [21]

The Site is located at **Yelahanka Zone** [1.1]
and is defined in drawings nos. _____
_____

The Defects Liability Period is 2 Years. [31]

Insurance requirements are as under: [13]

| | Type of Cover | Minimum cover for |
|---|---|---|

| | | Insurance |
|---|---|---|
| (i) | Works and of Plant and materials | The sum stated in the Agreement plus 20% |
| (ii) | Loss or damage to equipment | Full replacement cost |
| (iii) | Loss or damage to property of Third Party | Full replacement cost |
| (iv) | Personal injury or death insurance (a) for Third Party | |
| | (b) for Contractor's employees or labour | In accordance with the statutory requirements applicable to Karnataka |

Price Adjustment Formula; **(DELETED)** [40]

The maximum amount of liquidated damages for the whole of the works is Ten percent of final contract price. [41]

Repayment of advance payment for mobilization: **(DELETED)** [42]

The date by which "as-built" drawings (in scale 1 in 1000) in 2 sets are required is within 30 days of issue of certificate of completion of Whole or Section of the Work as the case may be. [48]

The date by which Operating and Maintenance Manuals are required is within 30 days of issue of certificate of completion of Whole or Section of the Work as the case may be.

The amount to be withheld for failing to supply "as built" drawings or supply of Operation and Maintenance Manuals by the date required is [48]

The following events shall also be fundamental breach of the contract: [49.2]

1. The contractor has contravened Sub-clause 7.1 and Clause 9 of CC.

The percentage to apply to the value of the work not completed representing the Employer's [50.1]

Additional cost for completing the Works shall be 30 percent (30%).
The tenderer must have 50% of the The following materials and remaining 50 % of the materials procured on lease/ Hire basis

# SECTION 9: BILL OF QUANTITIES

**(Enclosed separately)**

| Sl. No. | Description of item (with brief specification and reference to Book of specification) | Quantity | Unit | Rate (Rs) | | Amount (Rs) |
|---|---|---|---|---|---|---|
| | | | | In figures | In words | |
| | | | | | | |
| **Total Tender Price (in figures)** | | | | | | |
| **(in words)** | | | | | | |

**Note:**

(1) Item for which no rate or price has been entered in will not be paid for by the Employer when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities (refer: ITB Clause 7.2 and CC Clause 33.2).

(2) Unit rates and prices shall be quoted by the Tenderer in Indian Rupees.

(3) Where there is a discrepancy between the rate in figures and words, the lower of the two will govern. [ITB Clause 20.1(a)]

(4) Where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by quantity, the unit rate quoted shall govern [ITB Clause 20.1 (b)]

## SECTION 10: FORMAT OF BANK GUARANTEE FOR SECURITY DEPOSIT

To: The Commissioner
Bruhat Bangalore Mahanagara Palike
N.R.Square, Bangalore -560002

WHEREAS ..... *[name and address of Contractor]* (hereinafter called "the Contractor") has undertaken, in pursuance of Contract No. ..... Dated:.....to execute..... *[name of Contract and brief description of Works]* (hereinafter called "the Contract");

AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a recognized bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Contractor such a Bank Guarantee;

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of Rs..... *[amount of guarantee]* [5]_Rupees..... .....*[in words]*, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of .....*[amount of guarantee]*[6] as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Contractor before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed there under or of any of the Contract documents which may be made between you and the Contractor shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

This guarantee shall be valid until 30 days from the date of expiry of the Defects Liability Period.

Signature and seal of the guarantor _____
Name of Bank _____
Address _____
Date _____

[5] An amount shall be inserted by the Guarantor, representing the percentage of the Contract Price specified in the Contract